

2. Instances in which justices may bail at their discretion:

ACCESSORIES.—By this Statute “persons accused of command and force or aid of a felony shall be bailed,” unless there appear a strong presumption of their guilt. In treason there are no accessories. In other felonies, except those which in consideration of law are unpremeditated, (but *quære*, may there not be an accessory *after* the fact in murder in the second degree or manslaughter,) there may be accessories. But in crimes under the degree of felony there are no accessories, but all are guilty as principals, 4 Black. Comm. 36.

***AFFRAYS.**—As above observed a justice ought to be cautious how he **61** takes bail if a wound has been given, from which death may possibly ensue. An affray is the fighting of two or more persons in some public place to the terror of the people; for if the fighting is in private, it is not an affray but an assault. It differs from a riot in being unpremeditated.

ASSAULT AND BATTERY, see Affrays.

COMPOUNDING FELONIES.—This offence was formerly considered to make the party guilty of it equally guilty with the principal felon. But it is now punishable only with fine and imprisonment, except when accompanied with circumstances which would render the party an accessory after the fact.

CONSPIRACY.

FALSE PRETENCES, Obtaining goods, &c. under.—The Code, Art. 30, sec. 52,³⁰ makes this offense punishable by fine and imprisonment, or confinement in the penitentiary at the discretion of the Court.

INDECENCIES.—Such are all open and grossly scandalous lewdness, 4 Black. Comm. 65. See Sir Charles Sedley’s case, 2 Sid. 168, who was indicted for shewing himself naked from a balcony in Covent Garden to a great multitude of people, and was fined 3000 marks, imprisoned a week, and obliged to find security for his good behaviour for three years; but in *R. v. Crunden*, 2 Camp. 89, where the defendant bathed in the sea at Brighton, dressing and undressing himself on the beach near a row of inhabited houses, from the windows of which he might be plainly seen, and was convicted, though the Court had no doubt of the correctness of the conviction, they consented to his being discharged upon his entering into a recognizance to appear when called for to receive sentence; it being the first prosecution of the sort in modern times.

PERJURY.—Code, Art. 30, sec. 155.³¹

In most other cases a justice may bail.³²

³⁰ Code 1904, Art. 27, sec. 112 *et seq.*

³¹ Code 1904, Art. 27, secs. 356-359.

³² See on the subject generally Thomas’s Procedure in Justice Cases, secs. 359 *et seq.*; Latrobe’s Justices’ Practice, secs. 1776 *et seq.* The Act of 1898, ch. 138 (Balto. City Code, sec. 278h), provides: “No police justice of the City of Baltimore shall accept bail for persons charged with manslaughter, murder or any offense the punishment for which may be death; any such justice may, in his discretion, accept the bail for any person charged with